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**MEMORANDUM**



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TO: Docket Control

FROM: Thomas M. Broderick  
Director  
Utilities Division

*Thomas M. Broderick*

DATE: September 18, 2015

RE: IN THE MATTER OF THE APPLICATION OF MOBILITIE, LLC FOR APPROVAL TO PROVIDE RADIO FREQUENCY TRANSPORT SERVICES TO ENABLE OTHER CARRIERS, INCLUDING BUT NOT LIMITED TO WIRELESS TELECOMMUNICATIONS SERVICE PROVIDERS, TO PROVISION THE DIRECT TRANSMISSION OF VOICE COMMUNICATIONS AND DATA SERVICES. (DOCKET NO. T-20913A-15-0191)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Private Line Telecommunications Services

Staff is recommending approval of the Application with conditions.

TMB:MAC:nr/MAS

Originator: Matt Connolly

Attachment: Original and Thirteen copies

Arizona Corporation Commission

**DOCKETED**

SEP 18 2015

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DOCKET NO.: T-20913A-15-0191

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

MOBILITIE, LLC  
DOCKET NO. T-20913A-15-0191

IN THE MATTER OF THE APPLICATION OF MOBILITIE, LLC FOR APPROVAL TO  
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CARRIERS, INCLUDING BUT NOT LIMITED TO WIRELESS TELECOMMUNICATIONS  
SERVICE PROVIDERS, TO PROVISION THE DIRECT TRANSMISSION OF VOICE  
COMMUNICATIONS AND DATA SERVICES

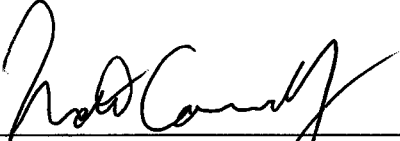
SEPTEMBER 18, 2015

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## STAFF ACKNOWLEDGMENT

The Staff Report for Mobilitie, LLC, Docket No. T-20913A-15-0191 was the responsibility of the Staff member listed below. Matt Connolly was responsible for the review and analysis of the Mobilitie, LLC Application for a Certificate of Convenience and Necessity to provide Radio Frequency Transport Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.



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Matt Connolly  
Executive Consultant II

## **1. INTRODUCTION**

On June 9, 2015, Mobilitie, LLC, ("Mobilitie" or "Applicant") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide private line telecommunications services within the State of Arizona. The Applicant states it will provide radio frequency transport services to enable other carriers, including but not limited to wireless telecommunications service providers, to provision the direct transmission of voice communications and data services. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. Mobilitie's June 9, 2015 Application included a proposed Tariff No. 1 for the competitive private line services it is requesting the authority to provide.

On July 21, 2015, Staff issued its First Set of Data Requests to Mobilitie. On July 22, 2015, Staff issued its Second Set of Data Requests to Mobilitie.

On July 24, 2015, the Administrative Law Judge ("ALJ") assigned to this matter filed a Procedural Order. On July 30, 2015, Staff, the ALJ, and the representative for Mobilitie, participated in an expedited Procedural Conference to discuss Staff's proposed revised procedural due dates. Following the Procedural Conference, a revised Procedural Order was docketed that same day.

On August 6, 2015, a Notice of Appearance was filed indicating representation on behalf of the Applicant by local counsel. On August 17, 2015, a representative for Mobilitie filed an Affidavit of Publication, certifying that the Applicant had published notice of its Application and the scheduled Hearing.

On August 20, 2015, the Applicant filed its responses to Staff's First Set of Data Requests. On August 21, 2015, the Applicant filed its responses to Staff's Second Set of Data Requests. On September 2, 2015, the Applicant filed Amended Responses to Staff Data Request 1.9.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

Mobilitie, formed on June 6, 2003, is a foreign limited liability corporation organized under the laws of the State of Nevada and is 100 percent owned by its officers. Mobilitie's headquarters is located at 2220 University Drive, Newport Beach, California, 92660.

Mobilitie currently has authority to provide competitive resold or facilities-based local exchange and/or resold interexchange services in forty-six (46) (see Attachment A)

jurisdictions, eighteen (18) in which the Applicant states they are providing service.<sup>1</sup> The Applicant has no affiliates in Arizona.

The officers and management team of Mobilitie have a combined fifty-three (53) years' experience in the telecommunications industry.<sup>2</sup> Mobilitie's Network Operations Center is located in Sacramento, California which will provide 24x7x365 customer service and can be reached via phone at 888-789-8499.<sup>3</sup>

Mobilitie is a wireless infrastructure provider who funds, deploys and operates indoor and outdoor neutral host Distributed Antennae Systems ("DAS"), Small Cell and Wi-Fi networks, communication tower sites and other infrastructure used by wireless carriers, emergency responders, public safety agencies, backhaul providers and other similar companies.<sup>4</sup> Mobilitie plans to build such a network infrastructure in Arizona and/or deploy equipment within the Arizona statewide geographic market with specific locations based on market and customer demand.<sup>5</sup>

Mobilitie's mobile and wireless infrastructure utilizes software for network monitoring, reporting and user device authentication. In order to protect the security of its network, Mobilitie utilizes network security software solutions that allow for secure connection on all portions of the network. Mobilitie employs "Industry Data Safeguards", meaning those data security practices, procedures and safeguards typically implemented by US corporations and include such practices as ensuring the physical security of servers, using secure data centers that utilize redundant power and cooling, restricting data center access to authorized individuals, using up to date firewalls and intrusion detection systems and enforcing security standards and access controls for and by its employees and contractors.<sup>6</sup>

With respect to the structures/antennas and pole attachments of which Mobilitie is engaged in the construction, Mobilitie will comply with all jurisdictional industry standards when securing the structures on rights-of-way. In addition, Mobilitie will retain only licensed contractors who are compliant with the National Engineering Safety Code's standards for construction. Further, the municipalities in which they construct will be indemnified if anything should go wrong with respect to securing of the equipment itself.<sup>7</sup>

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

On July 6, 2015, Mobilitie provided the audited consolidated confidential financial statements of Mobilitie and its subsidiaries for 2013 and 2014. The Applicant's financial statements for year ending December 31, 2013, lists total assets of \$103,576,067; total equity of \$81,007,882 and net income of negative \$2,326,250. The financial statements for year ending December 31, 2014, lists total assets of \$96,015,376; total equity of \$59,178,686 and

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<sup>1</sup> Mobilitie Response to Staff Data Request STF 1.18.

<sup>2</sup> Mobilitie Response to Staff Data Request STF 1.1.

<sup>3</sup> Mobilitie Response to Staff Data Request STF 1.19 and 1.20.

<sup>4</sup> Mobilitie Response to Staff Data Request STF 1.4.

<sup>5</sup> Mobilitie Response to Staff Data Request STF 1.5.

<sup>6</sup> Mobilitie Amended Response to Staff Data Request STF 1.9.

<sup>7</sup> *Ibid.*

net income of negative \$29,124. The Applicant also provided notes with the financial statements.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLEC") and interexchange carriers ("IXC") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. The Applicant indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$0. Accordingly, Mobilitie's fair value rate base is too small to be useful in a fair value analysis. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

The rates proposed by this filing are for competitive services and the rates to be ultimately charged by the Applicant will be heavily influenced by the market. Mobilitie provides service to its customers on a site-by-site basis. Therefore the vast majority of its customers are expected to purchase transport services under individual case basis ("ICB") contracts with Mobilitie. For Mobilitie customers that chose not to negotiate an ICB contract, those customers will be allowed to purchase services in accordance with the rates established in Mobilitie's proposed tariff.

Staff has reviewed the rates to be charged by the Applicant. Mobilitie's rates are for highly competitive services and the services are targeted for sophisticated carriers and communications companies. These carriers and companies are experienced in negotiating charges and other contract terms. Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than Mobilitie's total service long-run incremental cost of providing the service pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1109. Mobilitie's proposed tariff includes initial rates that equal the maximum rates. The proposed rates are comparable to the rates charged by other carriers operating in the State of Arizona. Therefore, Staff believes that Mobilitie's proposed rates are just and reasonable.

#### **5. REVIEW OF COMPLAINT INFORMATION**

A Staff search of the Federal Communication Commission ("FCC") website revealed three FCC Notices of Violation issued against Mobilitie Investments II, LLC in 2011 regarding a failure to post an Antenna Structure Registration Number at the base of an antenna structure. Mobilitie Investments II, at that time, was solely owned by Mobilitie



Partners II, LLC which, in turn, is solely owned by Mobilitie. Mobilitie claims these Notices of Violation were minor, administrative issues and the underlying violation was both inadvertent and one that is quite common to the industry.<sup>8</sup>

In its Application, the Applicant stated it had one application for service denied in the State of Colorado. In response to a Staff Data Request 1.10, Mobilitie added that Colorado Public Utilities Commission ("Colorado PUC") Staff determined that the type of service Mobilitie provides would not require a certificate of public convenience and necessity and, due to changes in Colorado law, Mobilitie would be able to provide its services without having to obtain such a certificate.<sup>9</sup> Mobilitie also indicated its application in Colorado was dismissed without prejudice, and was thus not actually denied. Colorado PUC Staff provided confirmation of this to Staff.

In its Application, Mobilitie stated that it was named as a party in three (3) Nevada Public Utilities Commission ("Nevada PUC") show cause proceedings. Staff investigated further and found that Mobilitie was included in Docket No. 12-08024 in 2012 for failure to timely comply with its 2011 annual reporting obligations with the result that Mobilitie was ordered to pay a fine of \$125.00. Subsequently, Nevada Staff opened Docket No. 13-08019 in order to determine why companies who did not timely meet their regulatory obligations in 2012 and/or 2013 should not have their certificates of public convenience and necessity revoked and Docket No. 13-10053 was opened to effect this proceeding. Mobilitie was included in both of these dockets as it late filed its 2013 annual report. Mobilitie was ordered to pay a fine of \$500.00, which it did, and its certificate was not revoked. Staff contacted the Nevada PUC in August of 2015 and learned that the Applicant is currently in compliance with all applicable rules in Nevada.

Mobilitie also stated in its Application that it was subject to a show cause proceeding in the State of Wyoming under Docket No. 746992-TI-13 in 2013 for failure to file its annual report. Subsequently, in this same docket, as no representative for Mobilitie responded or appeared to present evidence as to why its authority should not be cancelled, an Order was issued in January of 2014 cancelling the Mobilitie's authority to provide telecommunications service. Mobilitie reapplied for telecommunications authority in Wyoming and was granted approval of its request in November of 2014. Staff contacted the Public Service Commission in Wyoming and learned that since being re-granted authority in November of 2014, the Applicant has complied with all applicable rules in Wyoming.

An internet search by Staff revealed that in 2008, the Nebraska Public Service Commission initiated a docket to revoke the operating authority of various companies, including Mobilitie, for failure to file a 2007 Annual Report. The issue was resolved in May of 2008 by Mobilitie agreeing to sign a stipulation admitting to a late filing as well as paying an administrative fine. This item was not disclosed with Mobilitie's Arizona Application. In response to Staff's query regarding this omission, Mobilitie stated that it was an inadvertent oversight and at that time Mobilitie's internal state reporting and compliance was not being monitored.<sup>10</sup>

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<sup>8</sup> Mobilitie Response to Staff Data Request STF 1.15.

<sup>9</sup> Mobilitie Response to Staff Data Request STF 1.10.

<sup>10</sup> Mobilitie Response to Staff Data Request STF 1.14.

An internet search by Staff revealed that in October of 2013, the Rhode Island Public Utilities Commission ("Rhode Island PUC") rescinded Mobilitie's registration to provide telecommunications service as Mobilitie had failed to file an annual report or pay applicable fees by July 1. This item was not disclosed with Mobilitie's Arizona Application. In response to Staff's query regarding this omission, Mobilitie stated it was not made aware of this action until very recently and it had filed a new application for authority in July of 2015.<sup>11</sup> Upon inquiry, the Rhode Island PUC informed Staff that the new application had been approved in a recent August Open Meeting.

In response to Staff contact, the South Carolina Public Service Commission indicated that in 2013, Mobilitie was the subject of a Rule to Show Cause Proceeding for failure to file its 2012 annual report. The matter was resolved when Mobilitie filed its report prior to the matter going to hearing.

In response to Staff contact, the Oregon Public Utility Commission ("Oregon PUC") responded that there had been one instance in which Mobilitie had a non-compliance situation when, in 2013, Mobilitie "didn't submit monies due by the deadline". However, once Mobilitie was notified, they quickly paid the amount due. The Oregon PUC is not aware of any complaints filed by customers against Mobilitie.

In September of 2014, Staff learned Mobilitie was \$200.00 in arrears in the State of Kansas for past due 2014 Kansas Corporation Commission ("KCC") assessments. Staff contacted the KCC later the same month and was informed that Mobilitie had paid the outstanding amount and was, at that time, current with all filing obligations. Staff contacted the KCC again in August of 2015 and was informed that the annual KCC assessment payment of \$200 was again late and that notice had been sent to Mobilitie stating it had until September 8, 2015 to remit payment for 2015 KCC assessments. Staff contacted the KCC in September of 2015 and was informed Mobilitie had paid the outstanding amount and is in compliance with its KCC filing requirements.

In response to Staff contact, the Tennessee Regulatory Authority ("TRA") responded Mobilitie is late in paying a 2015 \$100.00 inspection fee. The TRA will not take any action unless Mobilitie fails to pay by the end of 2015.

Staff includes the table below as a summary of the aforementioned compliance history:

Jurisdiction	Violation	Regulatory Action	Current Action
Federal	Failure to post Antenna Structure Registration Number	None	Resolved
Nevada	Failure to file timely 2011 Annual Report	Paid \$125.00 fine	Resolved
Nevada	Failure to timely file 2013 Annual Report	Paid \$500.00 fine	Resolved

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<sup>11</sup> Mobilitie Response to Staff Data Request STF 1.13.

Wyoming	Failure to timely file 2013 Annual Report	Authority cancelled	Company reapplied and was re-granted authority in 2014
Nebraska	Failure to timely file 2007 Annual Report	Mobilitie signed stipulation admitting to a late filing/paid administrative fine	Resolved
Rhode Island	Failure to timely file 2013 Annual Report	Authority cancelled	Company reapplied and was re-granted authority in 2015
South Carolina	Failure to timely file 2012 Annual Report	Company included in Show Cause Proceeding	Resolved-Mobilitie filed annual report prior to matter going to hearing
Oregon	Failure to timely time submit "monies due"	Notified Company	Resolved-Mobilitie paid past due amount
Kansas	Failure to timely submit 2014 \$200 Corporation assessments	Notified Company	Resolved-Mobilitie paid past due amount
Kansas	Failure to timely submit 2015 \$200 Corporation assessments	Notified Company	Resolved-Mobilitie paid past due amount
Tennessee	Failure to timely pay 2015 \$100.00 inspection fee	None due until end of 2015	Pending

Staff contacted the Public Utility Commissions ("PUCs") in Florida, Michigan, Maine, Illinois, and Georgia and inquired whether Mobilitie was in good standing and if the company is or had been involved in a show cause proceeding. The information Staff obtained indicates that Mobilitie is authorized to provide telecommunications services in these states, is in good standing and not party to a show cause proceeding. Additionally, in response to Staff's inquiry, Georgia, Connecticut, Ohio, Iowa, North Carolina, New Hampshire, Virginia, Indiana, Arkansas and Wisconsin report either no instances of non-compliance or no complaints.

The Consumer Services Section of the Utilities Division reports that Mobilitie is in Good Standing with the Corporations Division of the Commission. Staff is concerned with Mobilitie's instances of its failure to file annual reports in other jurisdictions in a timely manner. Staff recommends that Mobilitie be put on notice that a failure to file an annual report in Arizona in a timely fashion will result in the revocation of its Arizona CC&N after due process.

Mobilitie stated in its Application that as it has now retained the managed compliance services of a third-party compliance reporting service provider, it will no longer fail to meet its compliance obligations in a timely fashion.

## **6. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### **6.1 *Competitive Services Analysis For Private Line Services***

#### **6.1.1 Private Line Services**

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

#### **6.1.2 Description of Requested Services**

Mobilitie proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

#### **6.1.3 A description of the general economic conditions that exist that make the relevant market for the service one that is competitive.**

IXCs hold a substantial share of the private line service market. Also, a number of ILECs and CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

#### **6.1.4 The number of alternative providers of the service.**

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

#### **6.1.5 The estimated market share held by each alternative provider of the service.**

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

- 6.1.6 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

- 6.1.7 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the CLECs offer substantially similar services.

## **7. RECOMMENDATIONS**

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### *7.1 Recommendations on the Application for a CC&N*

Staff recommends that Applicant's Application for a CC&N to provide private line intrastate telecommunications services, as listed in this Report, be approved. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
3. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
4. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. The Applicant indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$0. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base

information submitted by Mobilitie, the fair value information provided was not given substantial weight in this analysis.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process. Additionally, Staff recommends that:

1. The Applicant shall notify the Commission through a compliance filing within (30) thirty days of the commencement of service to its first customer.
2. Thirty (30) days prior to the commencement of offering service, the Applicant notify the Commission of its customer support address, phone number and email address.
3. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
4. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

*7.2 Recommendation on the Applicant's Petition to have its Proposed Services Classified as Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or long distance service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

**Attachment A**

The following are the jurisdictions in which Mobilitie is currently authorized to provide telecommunications services:

- |                              |                     |
|------------------------------|---------------------|
| 1. Alaska                    | 24. Nebraska*       |
| 2. Arkansas                  | 25. Nevada          |
| 3. California*               | 26. New Hampshire   |
| 4. Connecticut               | 27. New Mexico      |
| 5. Delaware                  | 28. New Jersey      |
| 6. The District of Columbia* | 29. New York*       |
| 7. Florida*                  | 30. North Carolina* |
| 8. Georgia*                  | 31. North Dakota    |
| 9. Hawaii                    | 32. Ohio*           |
| 10. Iowa                     | 33. Oklahoma        |
| 11. Illinois*                | 34. Oregon          |
| 12. Indiana*                 | 35. Pennsylvania*   |
| 13. Kansas                   | 36. South Carolina  |
| 14. Kentucky*                | 37. South Dakota    |
| 15. Louisiana                | 38. Tennessee       |
| 16. Maine                    | 39. Texas*          |
| 17. Maryland                 | 40. Utah*           |
| 18. Massachusetts            | 41. Vermont         |
| 19. Michigan                 | 42. Virginia*       |
| 20. Minnesota                | 43. Washington*     |
| 21. Missouri*                | 44. West Virginia   |
| 22. Mississippi              | 45. Wisconsin       |
| 23. Montana*                 | 46. Wyoming         |

\*Indicates jurisdictions in which Mobilitie is currently providing service.